

**CAUSE NO. CC-21-00840-A****ANA NUNEZ LOPEZ,***Plaintiff,***VS.****FIESTA MART, LLC***Defendant.***§ IN THE COUNTY COURT AT LAW****§****§****§****§****§****§****§****§****NO. 1****OF DALLAS COUNTY, TEXAS****DEFENDANT'S ORIGINAL ANSWER AND AFFIRMATIVE DEFENSES**

Defendant Fiesta Mart, LLC ("Defendant") hereby submits its Original Answer to Plaintiff's Original Petition and would show as follows:

**GENERAL DENIAL**

1. Without waiving any other defenses Defendant may have or hereafter come to have or urge, Defendant generally denies each and every material allegation in Plaintiff's Original Petition (and all subsequent amended and supplemental Petitions filed herein) pursuant to Rule 92 of the Texas Rules of Civil Procedure and demands strict proof thereof by a preponderance of the evidence or by clear and convincing evidence as the law requires.

**SPECIAL EXCEPTION**

2. Plaintiff's ambiguous references to "Fiesta Mart, LLC" in her live pleadings are confusing and do not properly identify the store location where the alleged incident occurred. To the extent necessary, Defendant specially excepts to Plaintiff's live pleading on the basis of proper venue and requests Plaintiff specify, with precision the location where the alleged incident occurred.

### **AFFIRMATIVE DEFENSES**

Without conceding that the following are affirmative defenses for which Defendant bears the burden of proof, Defendant asserts that:

3. Any supposed hazard at issue in the incident was open and obvious. Defendant owed no duty to Plaintiff.

4. Defendant relies upon the proportionate responsibility provisions of Chapter 33 of the Texas Civil Practice and Remedies Code. The responsibility of the parties, including Plaintiff, must be compared by the trier of fact. Plaintiff was certainly a proximate, if not the sole, cause of her own incident and injuries. Without doubt, Plaintiff was more than fifty percent responsible for the incident in question and is therefore barred from recovery.

5. Any award of pre-judgment interest for damages that have not yet accrued would violate Defendant's rights to substantive and procedural due process under the Fifth and Fourteenth Amendments to the United States Constitution, as well as Article I, Sections 14, 16, and 19 of the Texas Constitution.

6. Defendant pleads further that any recovery of medical expenses or health care expenses allegedly incurred by Plaintiff, is limited to the amount actually paid or incurred by or on behalf of Plaintiff, if any, pursuant to Tex. Civ. Prac. & Rem. Code §41.0105. Defendant respectfully requests this Honorable Court to compute Plaintiff's award, if any, in accordance with the language of Section 41.0105 of the Texas Civil Practice and Remedies Code. Defendant also requests that Plaintiff prove (1) that reasonable and necessary medical or healthcare

expenses do exist, (2) what part of the medical or healthcare expenses have actually been paid or for which Plaintiff remains liable; and (3) that the medical or healthcare expenses claimed resulted from conduct of Defendant.

7. To the extent Claimant seeks punitive or exemplary damages, Respondent relies upon the limitations and other provisions of Chapter 41 of the Texas Civil Practices & Remedies Code.

### **PRAYER**

WHEREFORE, PREMISES CONSIDERED, Defendant prays that Plaintiff take nothing by her suit, that Defendant be dismissed from this action, awarded court costs and for such other and further relief to which Defendant may be justly entitled.

Respectfully submitted,

By: /s/ **Trek Doyle**

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*ATTORNEYS FOR DEFENDANT*

*FIESTA MART, LLC*



Doyle & Seelbach

**CERTIFICATE OF SERVICE**

By my signature above, I hereby certify that a true and correct copy of the above and foregoing document has been served by electronic delivery to counsel identified below on this, the 1st day of April 2021.

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William Templeton on behalf of Trek Doyle  
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 Status as of 4/2/2021 8:18 AM CST

## Case Contacts

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## Associated Case Party: FIESTA MART, LLC

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